

REMARKS

The Examiner rejected claims 1-7 under 35 U.S.C 102(b) as being anticipated by Constantine (US 2,631,040).

To support the rejection the Examiner stated, "CONSTANTINE discloses a lighting system (fig. 1) for illuminating an interior of a fireplace, comprising: a rod (log 2) for securing said lighting system to an inner surface of such fireplace (col. 1, lines 1-23); a bracket member (clamp 6, fig. 2) engageable (col. 1, lines 51-55) with the rod (2), a first means (socket 16) attached to the bracket member (8) for providing illumination; a second means (leads 18, 22) connected to the first means (16) for illumination (col. 2, lines 12-17); wherein the second means (18,22) is at least a standard 110 volt electrical circuit (col. 2, lines 15-17 & 55-56); wherein the second means (18, 22) further includes a flasher arrangement (14) for providing a twinkle effect (col. 3, lines 2-25); wherein the first means (16) includes a plurality of incandescent lamps (4,6 26, fig. 2) which may be different colored lamps (col.2, lines 1-2 & 19-25)."

Applicant has amended claim 1 to further emphasize that the inner surface of such fireplace is a inner wall surface. Support for this amendment is found on page 3, lines 9-25.

Constantine provides a lighting system for artificial fireplaces and is used to create an illusion that a fire is actually burning in the fireplace. Constantine teaches, "Two incandescent electric lamps 4 and 6 are secured to the rear of

one of the logs, for example by means of clamps such as are shown at 8 in Figure 2 of the drawings, which are secured to a nail or other suitable support."

What the Examiner is calling a rod is a log, whether the log be real or artificial, it is still a log and can hardly be compared to a rod. Such logs are not really an inner wall surface of the fireplace, as now claimed, in fact they are not really a part of the fireplace at all but are a separate entity that is put into the fireplace. The Examiner also refers to a clamp 8 as being a bracket which secures the lamps to the logs by means of a nail or other suitable support.

It is well settled patent law for a reference to anticipate an invention, such reference must show each and every limitation of the claim. Clearly this is not the case here, as Constantine teaches a completely different device than what is claimed in the present invention. The present invention provides a rod for securing such lighting system to an inner wall surface of such fireplace. Constantine does not teach or even suggest a rod secured to an inner wall surface of a fireplace.

Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-7 under 35 U.S.C 102(b) as being anticipated by Constantine (US 2,631,040).

The Examiner rejected claims 1 and 2 under 35 U.S.C. 102(b) as being anticipated by Bridgewater (US 4,962,750). The Examiner stated, "BRIDGEWATER discloses a lighting system (fig.1) for

illuminating the interior of a fireplace (col.1, lines 6-8), comprising: a rod (metallic bar 16) for securing said lighting system to an inner surface of such fireplace (figs.1-2); a bracket member (mount 22 with bracket arm 27) engageable with (col.2, lines 54, 63-64) the rod (16), a first means (pipe 21) attached to the bracket member (22,27) for providing illumination (col. 2, lines 51-58); a second means (gas line 23) connected to the first means (21) for providing power to the first means (21) For illumination; wherein the second means (23) is gas (col.2, line 55)."

As stated previously Applicant has amended claim 1 to further emphasize that the inner surface of such fireplace is a inner wall surface. Support for this amendment is found on page 3, lines 9-25.

Applicant must disagree with the Examiner's interpretation of Bridgewater. Bridgewater teaches, "A fireplace gas burner apparatus incorporates a provision for remotely controlled ignition. Auxiliary manual control of electrical circuitry that produces ignition is also provided." (Abstract). Bridgewater's invention is concerned with gas burners in the fireplace to simulate the burning of logs and with remotely controlled ignition of such burners. There is no teaching or even a suggestion in Bridgewater about an illuminating system for illuminating the interior of a fireplace.

The present invention provides a rod for securing the lighting system to an inner wall surface of such fireplace. Bridgewater does not teach a rod secured to an inner wall surface of such fireplace. The part that the Examiner is calling a metallic rod (16) is hardly a rod in the sense of the present invention and which as Bridgewater teaches "...in turn support forwardly and rearwardly extending metallic bars 16, which are transversely spaced apart and have upwardly inclined terminals 16a." The elements that are labeled 16 are basically parts of the grate which are used to support the logs 10 and 11. Figure 1 shows 5 separate elements that would be labeled as 16.

Bridgewater teaches, "Basically, the apparatus of the invention operates in an environment that includes an elongated main gas burner associated with a grate for supporting logs, there being a valve operatively connected with the burner to control flow of combustible gas to the burner." Bridgewater does not teach an illuminating system.

Applicant respectfully requests that the Examiner withdraw the rejection of claims 1 and 2 under 35 U.S.C. 102(b) as being anticipated by Bridgewater (US 4,962,750).

The Examiner also rejected claim 8 under 35 U.S.C. 103(a) as being unpatentable over Bridgewater (US 4,962,750). The Examiner stated, "Claim 8 recites said rod being an expandable rod, not disclosed by BRIDGEWATER. It would have been obvious to one of ordinary skill to provide any of the rod being metallic bar in

the fireplace device of BRIDGEWATER, with the rod or bar being expandable, at least thermally, since it is well-known in the art that the objects expand or are able to expand in size or length with the application of heat, in the case of Bridgewater, from the flames (32, 40) produced in the device."

Applicant must disagree with the Examiner's interpretation of Bridgewater with respect to the rod being expandable. The rod of the present invention is a rod that can be expanded to fit different size fireplaces. There is no thermal expansion of the rod that is possible in the present invention because one could not light a fire or have exposed flames with the present invention as it would be dangerous with the electrical wiring that is present. Further, the element that the Examiner is calling a rod 16 is part of the grate and is fixed in place and cannot expand other than the thermal expansion which the Examiner alludes to. This element is quite different from the expandable rod of the present invention that expands to the width of the wall surfaces of the interior of the fireplace.


Applicant respectfully requests that the Examiner withdraw the rejection of claim 8 under 35 U.S.C. 103(a) as being unpatentable over Bridgewater (US 4,962,750).

In view of the amendment to the claims and the discussion supra it is believed that claims 1-18 are patentable. Therefore, Applicant believes that this application is now in condition for

allowance and such allowance by the Examiner is respectfully requested.

In the event the Examiner has further difficulties with the examination and/or allowance of the application, the Examiner is invited to contact the undersigned agent for applicant by telephone at (412) 380-0725, if necessary, to resolve any remaining questions or issues by interview and/or Examiner's Amendment as to any matter.

Respectfully submitted,
James Ray and Associates

By 
Amos Bartoli
Registration No. 42,299
Agent for Applicant

JAMES RAY & ASSOCIATES
2640 Pitcairn Road
Monroeville, PA 15146
Tel. (412) 380-0725
Fax (412) 380-0748